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REPLY TO
ATTENTION OF

Regulatory Law Office
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DEPARTMENT OF THE ARMY
OFFICE OF THE JUDGE ADVOCATE GENERAL
901 NORTH STUART STREET
ARLINGTON, VA 22203-1837
November 13, 2000

ENTERED
Office of the Secretary

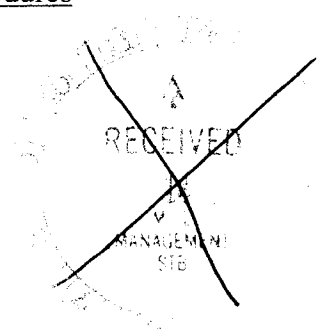
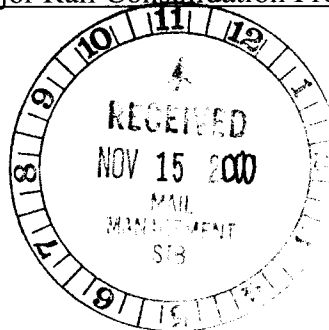
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Part of
Public Record



Subject: STB Ex Parte No. 582 (Sub-No. 1) – Major Rail Consolidation Procedures

Surface Transportation Board
Office of the Secretary
Case Control Unit
Attn: STB Ex Parte No. 582 (Sub-No. 1)
1925 K Street, NW
Washington DC 20423-0001



Dear Secretary:

Enclosed for filing in response to your Board's October 3, 2000 Notice of Proposed Rulemaking in the subject Docket are an original and 25 copies of the Comments of the Department of Defense. We have also included a 3.5-inch IBM-compatible floppy disk containing these Comments in both Word (file name: MRC17Nov) and converted to WordPerfect (file name: MRC17Novwp) format.

As more fully explained in the submitted Comments, the Military Traffic Management Command Transportation Engineering Agency (MTMCTEA) is the agency responsible for the management and execution of the Department of Defense Railroads for National Defense Program and the agency sponsoring these Comments. Accordingly, service of pleadings, orders, correspondence, etc. should made on:

Mr. Robert S. Korpanty, P.E.
MTMCTEA
720 Thimble Shoals Blvd, Suite 130
Newport News, VA 23606-2575
Telephone No. (757) 599-1163
Fax No. (757) 599-1560

Mr. Korpanty will also be available to answer any questions you may have concerning this presentation.

Sincerely,

Peter Q. Nyce Jr.
General Attorney
Regulatory Law Office
Phone: (703) 696-1644

SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 582 (Sub-No. 1)

MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF

THE

DEPARTMENT OF DEFENSE

17 NOVEMBER 2000

I. INTRODUCTION

The Military Traffic Management Command Transportation Engineering Agency (MTMCTEA), the agency responsible for the management and execution of the Department of Defense (DOD) Railroads for National Defense (RND) Program, submits the enclosed comments regarding major rail consolidation procedures. The RND Program's mission is to integrate DOD requirements into civil sector rail plans. Together with the Federal Railroad Administration (FRA) of the Department of Transportation, we conduct periodic readiness reviews of civil rail lines important to National Defense.

MTMCTEA works with the Military Services and Defense Agencies to identify the railroad corridors most important to DOD. This network is known as the Strategic Rail Corridor Network, (STRACNET). It is the minimum integrated and inter-connected rail corridor network essential to meeting National Defense rail transportation needs, consisting of some 38,000 miles of main lines and connectors.

These comments respond to the request by the Surface Transportation Board (STB) for comments relating to its proposed revision of major rail consolidation procedures, dated October 3, 2000. DOD agrees that the current merger evaluation criteria, set forth at 49 CFR Part 1180, require revision. National Defense issues arising from potential international mega-mergers are very broad and complex. DOD supports the STB's proposed modifications in their entirety.

II COMMENTS

A. National Defense: DOD appreciates the STBs including a requirement for rail carriers to assess and discuss the effects mergers will have on National Defense (proposed 49 CFR 1180.1). This requirement should aid in ensuring that rail mergers do not detract from the United States military's ability to deploy by rail. MTMCTEA recommends requiring the Applicants address the following specific areas of concern in discussing the possible impact of a merger on National Defense. Alternatively, these areas of concern should be matters the STB will consider in evaluating mergers.

1. The impact of a merger on maintenance of STRACNET and connector lines under the control of the merging carriers. These lines are identified in the MTMCTEA report STRACNET and Defense Connectors Lines, December 1998. Copies of these reports are distributed to strategic planners, chief engineers, clearance engineers, and marketing representatives of rail carriers with rail lines designated important to National Defense.
2. The impact of the merger on traffic levels over STRACNET lines under the control of merging carriers.
3. The specific plans for prioritization of DOD freight in the event of war or other contingency.

4. The agreements in place, if any, between DOD and merging carriers, addressing provisions of rail services to DOD in times of war or other contingency, and the impact a merger would have on those agreements. During a merger approval process, the STB should consider whether the merging carriers have established, or are willing to establish, agreements with DOD designed to ensure the carriers' rail services and equipment are available for the movement of DOD equipment and materiel in time of war or other contingency. This is particularly important in the event of a merger that results in foreign ownership or control of U.S. carrier.
5. Plans, procedures and/or agreements in place to ensure those routes, locomotives, rolling stock, and other equipment essential to the National Defense will be operated and adequately maintained after the merger.
6. The degree to which DOD traffic will be routed, as a result of the merger, over foreign rail lines, and the likelihood of assured access to such rail lines in time of war or other contingency.
7. In the event the merged carrier is owned or controlled by a foreign entity, the ability of that entity to sell its ownership or controlling interest to a third party without further regulatory review and approval. One specific concern is that a foreign owner acceptable to the STB and DOD may sell

its interest to a foreign owner that is unacceptable, for financial, National Defense or other reasons.

B. Cumulative Impacts and Crossover Effects: DOD supports elimination of the "one case at a time rule". This requirement should ensure that DOD, which relies on all Class 1 carriers for support, will not be adversely affected by rail consolidations. The elimination of the "one case at a time" rule will allow DOD to consider and comment upon possible adverse effects to National Defense interests arising from downstream responses by other carriers. This will also enable the STB to address the impact a merger will have on other carriers, consumers, shippers, National Defense, and other areas currently beyond the scope of STB's merger inquiries.

Relevant criteria for analyzing downstream effects include the following:

1. If the merging carriers' management teams were involved in other mergers, did they accomplish their stated goals in prior mergers? If not, how can the merger be conditioned to ensure that goals are met in the present transaction?
2. Same questions as (1) above for the responding carriers.
3. Timing and benchmarks for implementation and phasing of the initial and downstream transactions.

C. **Oversight:** Future rail mergers of Class 1 carriers can involve 25-50% of STRACNET and Connectors. With mergers of this magnitude, DOD supports the STB proposal to provide a 5-year oversight to ensure the objectives of the merger are accomplished. The large size of future mergers and the potential for service problems necessitates such oversight. This will enable STB to intervene if problems with military deployments occur as a result of the merger.

D. **Service Assurance and Operational Monitoring:** Quality rail service is vital to successful military deployments. To support this, the merging carrier's application should establish benchmarks for delivery schedules. The benchmarks should be prioritized -- reflecting different levels of on-time performance based upon the price or urgency of the service. The merging carriers should also substantiate how these benchmarks will be met or exceeded -- and the penalties they will accept in the event that the benchmarks are not attained. Again, quality rail service is critical for DOD to rapidly deploy forces. Additionally, DOD is very concerned about post merger abandonments as well as on-time delivery of material. Well-maintained track should be in place and carriers should provide service to deliver material when required.

E. **Transnational Issues:** In addition to DOD-unique concerns relating to foreign ownership or control of a U.S. rail carrier, DOD is concerned about the effect such ownership or control may have on the maintenance and safety of U.S. rail lines. The requirement, for applicants to address how ownership restrictions imposed by foreign governments should affect the public service assessment, will help DOD determine the

effects on rail line maintenance and safety. The new requirement for carriers to explain how cooperation with the FRA will be maintained without regard to nationality of merger applicants will support a safe rail network in the U.S. In addition, the likelihood of traffic being shifted from U.S. to foreign ports should also be considered when reviewing the application. A significant shift in traffic could threaten the economic health of U.S. ports eventually impacting the ability to meet National Defense needs.

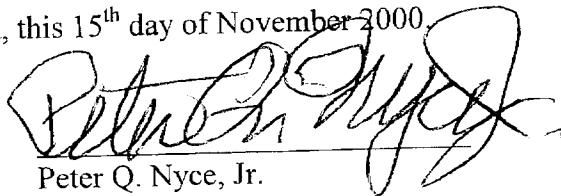
III. CONCLUSION

The ability to rapidly deploy military forces by rail must be preserved in rail mergers. The time and resources that were spent in the development of the relevant factors for the evaluation of international mega-mergers are unquestionably appropriate and necessary for the preservation of a competitive and responsive railroad industry in the years ahead. DOD appreciates this opportunity to comment and supports the STB's efforts to revise merger approval procedures.

CERTIFICATE OF SERVICE

I hereby certify a true and correct copy of the Comments of the Department of Defense, in STB Ex Parte No. 582 (Sub-No. 1 – Major Rail Consolidation Procedures was served by Federal Express or first-class U.S. mail, to all parties on the official service list.

Dated at Arlington County, Virginia, this 15th day of November 2000

A handwritten signature in black ink, appearing to read "Peter Q. Nyce, Jr.", written over a horizontal line.

Peter Q. Nyce, Jr.